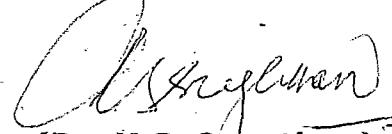


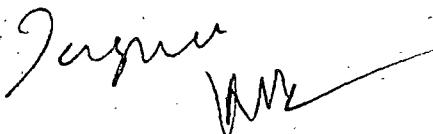
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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Draft order in Original Application No. 253/2004 is sent
herewith for kind concurrence.


(Dr. K.S. Sugathan) 21/12/09
Administrative Member

Hon'ble Dr. K.B. Suresh,
Judicial Member



**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 253/2004

Date of order: 05-01-2010

CORAM:

**HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER
HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER**

Sher Singh Chouhan S/o Shri Mot Singh Ji, aged about 35 years, resident of Railway Colony, Kamligat Via Devgarh, Dist. Rajsamand.

Post: The applicant is presently holding the post of Senior Clerk at Kamligat, N.W. Railway.

...Applicant.

Mr. Kuldeep Mathur, counsel for applicant.

VERSUS



1. The Union of India through the General Manager, North-Western Railway, Opposite Railway Station, Jaipur (Raj.).
2. The Divisional Rail Manager (Estt.), Divisional Office, North-Western Railway, Ajmer.
3. The Section Officer (P-Way), Northern Western Railway, Kamligat, District Rajsamand.

... Respondents.

Mr. Salil Trivedi, counsel for respondent Nos. 1 & 2.
None present for respondent No. 3.

ORDER

(Per Hon'ble Dr. K.S. Sugathan, Administrative Member)

The applicant is working as Senior Clerk in North-Western Railway at Kamlighat. He has filed this Original Application seeking to quash the order dated 11.04.2002 (Annex. A/1) and also for a direction to the respondents to pay the difference

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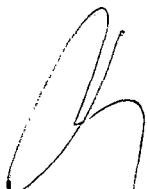
between pay scale of a Senior Clerk and the pay scale that was actually paid to him during the period 1995-2001. It is contended on behalf of the applicant that while he was working as a Junior Clerk, he appeared in a written test for promotion as a Senior Clerk on 21.03.1995 in which he was declared successful. On the basis of the said written test, he was also promoted to the post of Senior Clerk vide order dated 17.04.1995. Along with promotion he was transferred from Kamlighat to Palanpur in Gujarat. He joined the post of Senior Clerk in Palanpur and was also paid the salary of Senior Clerk for the month of June and July, 1995. In the meantime, vide order dated 09.05.1995, the respondents cancelled the result of written test held on 21.03.1995 and consequently the promotion order dated 17.04.1995 was cancelled. The applicant had challenged the cancellation of his promotion order before the Ahmedabad Bench of this Tribunal by filing O.A. No. 528/1995. The Ahmedabad Bench of this Tribunal issued an interim order on 13.07.1995 (Annex. A/3) directing the respondents to maintain the status quo as regards the post held by the applicant. It is the contention of the applicant that in pursuance to the aforesaid order of the Ahmedabad Bench of this Tribunal, the applicant was allowed to continue to work on the post of Senior Clerk. However, he was paid the salary of Junior Clerk only. In July 1997, he was transferred from Palanpur to Kamlighat as a Clerk. The transfer order mentions that he is being transferred from the post of Senior Clerk. The Original



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Application No. 528/1995 was finally decided by the Ahmedabad Bench of this Tribunal on 16.08.2000 (Annex A/5). The said O.A. was allowed in favour of the applicant. Subsequent to the orders of the Ahmedabad Bench of this Tribunal, the respondents issued an order dated 21.11.2001 in which the applicant was promoted on regular basis as Senior Clerk along with some others who were also affected by the cancellation of the written test held on 21.03.1995. Subsequently by the impugned seniority list dated 11.04.2002, the respondents incorporated the date of the joining of the applicant as Senior Clerk as 27.11.2001. The applicant has challenged this order by which his seniority has been affected and his eligibility for getting the pay of Senior Clerk has been nullified.

2. The respondents have filed a reply in which they have contended that the issue raised by the applicant is barred by limitation. The applicant was promoted by order dated 17.04.1995 to the post of Senior Clerk on the basis of written test held on 21.03.1995. However, by order dated 09th May, 1995, the promotion was cancelled. The applicant has conveniently omitted to mention his actual date of joining at Palanpur. The applicant was working as a Clerk in Palanpur. The promotion order was cancelled because of some irregularities. The interim order passed by the Ahmedabad Bench of the Tribunal directed that the status quo should be maintained. On the date of the said interim order, the applicant was working as a Clerk in the Palanpur Office and therefore, he

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was rightly given the pay scale of Clerk. The applicant was relieved on his promotion from Kamalighat on 03.05.1995 and immediately thereafter on 09.05.1995, the promotion order was cancelled. The applicant has not stated the date on which he joined at Palanpur which is a material piece of information. After the final order issued by the Ahmedabad Bench of the Tribunal in O.A. No. 528/1995, the applicant was promoted as Senior Clerk by order dated 21.11.2001. It is evident from the order dated 21.11.2001 that the applicant was working as a Clerk prior to that date. The applicant resumed the charge of Senior Clerk on 27.11.2001, therefore, question of applicant being entitled to pay of Senior Clerk prior to this date does not arise. The applicant did not bring to the notice of the Ahmedabad Bench of the Tribunal that he is being paid the salary of Junior Clerk. On the direction of the Tribunal, the respondents filed an additional affidavit in which it has been stated that as per the copy of the pay bills, the date of joining of the applicant at Palanpur is 05.05.1995. It is further stated in the additional affidavit that as per the attendance register also, the applicant was treated as a Clerk by the Palanpur office. It is further contended by the respondents that the designation of the applicant as Senior Clerk mentioned in the transfer order dated 17.07.1997 (Annex. A/4) is an error.



[Signature]

3. We have heard the learned counsel for the applicant Shri Kuldeep Mathur and learned counsel for the respondent Nos. 1 & 2 Shri Salil Trivedi. We have also perused the records carefully.

4. The issue for consideration in this Original Application is whether the applicant is entitled to be considered as having been promoted to the post of Senior Clerk with effect from 05.05.1995 and consequently entitled to the pay and allowances of a Senior Clerk from that date onwards. It is not disputed that the applicant was promoted on the basis of an examination held on 21.03.1995. It is also not disputed that the said examination was cancelled on account of some irregularities and consequently the promotion was cancelled by the order dated 09.05.1995 and consequently the promotion order dated 17.04.1995 was also cancelled by the same order. There is, however, a controversy ~~is~~ about the maintenance of status quo as directed by the Ahmedabad Bench of the Tribunal. The contention of the applicant ^{is} that by virtue of the interim order of the Ahmedabad Bench of the Tribunal, he continued to function as Senior Clerk, and therefore, he was entitled to be paid the pay and allowances of a Senior Clerk. We are unable to accept this contention of the applicant because the interim order was passed by the Ahmedabad Bench of the Tribunal on 13.07.1995 i.e. long after the cancellation of the promotion order which was done on 09.05.1995. If the respondents had actually violated the interim orders of the Ahmedabad Bench of the Tribunal, the applicant should have immediately approached the same Bench



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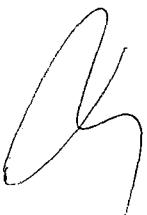
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for remedial relief. He is staking his claim for higher pay and allowances after nearly 9 years. We therefore do not accept the contention that by virtue of the interim order the applicant should have been continued as a Senior Clerk and paid salary accordingly.

5. The Ahmedabad Bench of the Tribunal had allowed O.A. No. 528/1995 vide order dated 16th August, 2000. The following extract from the order dated 16th August, 2000 is relevant:


"3. We have considered the submission of Mr. K.K. Shah and particularly the fact that the same order dated 9.5.1995 was considered by the Tribunal and certain directions were given in OA 420/95, 421/95 and 422/95. Following our decision in these OAs, we hold that the applicant had in fact assumed the charge as senior clerk on the basis of order dated 17.4.95. This has given him a certain right and he should have been given an opportunity before he was sought to be reverted by the respondents by order dated 9.5.95. The applicant was given regular promotion and it is not the case here that he had to be reverted to accommodate a senior or on account of the abolition of the post. The failure to give notice to him has resulted in non-adherence to the principles of natural justice. In view of the above and following our decision in Ramchandralal Prem case we quash the order dated 9.5.95 reverting him to the level of junior clerk. Mr. Shevde says that liberty may be given to the respondents to proceed further in the matter. The respondents may take whatever action is permissible under the law."


It is evident from the aforesaid extract that the cancellation order issued by the respondents dated 09.05.1995 has been quashed by the Tribunal. However, it was also stated in the order that the respondents may take whatever action permissible under the law. In the subsequent order passed by the respondents on 21.11.2001, they have stated that they have now decided to treat the result of the written test held on

21.03.1995 as valid. The following extract from the order dated 21.11.2001 is relevant:

"By this Office Order No. ED/839/20 Part-I dated 21.03.1995, the result of written examination for regular promotion from Clerk pay scale of Rs. 950-1500 (new) to Senior Clerk pay scale of Rs. 1200-2040 (new) was declared. The said result is hereby considered as valid / kept as it is." (English translation of Hindi text)

After making the above observation, the respondents have listed the names of the officials who were promoted to the post of Senior Clerk. The said list includes the name of the applicant also in paragraph no. 3 at sl. No. 1.

The aforesaid action taken by the respondents makes it amply clear that they have since revalidated the result of the written test declared on 21.03.1995 and therefore, the promotions effected on the basis of that test should be deemed to have been treated as valid. The subsequent action of the respondents in asking the applicant to submit another joining report cannot, therefore, be sustained.

6. Learned counsel for the respondents has relied upon the recent judgment of the Hon'ble Supreme Court in the case of Union of India and Others vs. Tarsem Singh reported in (2008) 2 SCC (L&S) 765, wherein the Hon'ble Supreme Court held as follows:

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is

based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrong will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

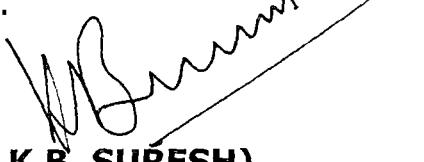


We have considered the facts and circumstances of the case cited by the respondents' counsel. The facts of the present case are, however, quite different. In the present case, the applicant is seeking relief on the basis of correct interpretation of the order of the Ahmedabad Bench of the Tribunal in O.A. No. 528/1995. The order of the Tribunal was pronounced on 16th August, 2000 and thereafter subsequent action was taken by the respondents in the year 2001-2002. The impugned order that has been assailed is dated 11.04.2002 and this O.A. has been filed in the year 2004. Under the circumstances, it cannot be said that the applicant's claim should be rejected on the ground of limitation.

7. In view of the above discussion, we are of the considered view that the applicant has been able to establish that he is entitled to be considered as having been promoted as a Senior Clerk w.e.f. 05.05.1995 by virtue of the final order of the

Ahmedabad Bench of this Tribunal in O.A. No. 528/1995. The Original Application is, therefore, allowed. The respondents are directed to correct the date of joining of the applicant in the impugned order dated 11.04.2002 (Annex. A/1) as 05.05.1995 instead of 27.11.2001 and also extend all consequential benefits to the applicant within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.




(DR. K.B. SURESH)
JUDICIAL MEMBER


(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

nlk

Received copy
12/12/16
For Kalideepnath
and

R/K
21/12/16

दिनांक 17/12/15 के अल्लेशनुसार
मेरी उपस्थिति दे 9/2/16
को घण्टा-II व घण्टा-III के बाहर।

अल्लेशनुसारी
कल्याण अधिकारी
जोधपुर न्याय बोर्ड, जोधपुर